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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/997,322
Filing Date: November 27, 2001
Appellant(s): GOUGH ET AL.

Paul L. Hickman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/31/2009 appealing from the Office action mailed 12/22/2008 .

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 33-51, 61-65, and 84-86

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

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subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

XP-002150023, "Streaming Email", September 4, 1998, pages 303-317.

Tolba et al. ("Pure Java-based Streaming MPEG Player"), November 1998, pages 216-224

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 46-51, 61-65 are rejected under 35 U.S.C. 102(b)** as being anticipated by XP-002150023 ("Streaming Email"), hereinafter "**Streaming Email**".

As per claim 46, “Streaming Email” teaches an audiovisual e-mail system comprising:

- “means transmitting over a network to a server from a sender machine an audiovisual enhancement which is associated with a message from said sender”, said message to be sent as an e-mail to at least one recipient on said network” at pages 310-312; and
- “means associating said message with a self-executing program operative to stream said audiovisual enhancement, at least in part, from said server over said network and to display said audiovisual enhancement in conjunction with said message on a recipient machine upon the selection of said message by said at least one recipient” at page 312-313.

As per claim 47, “Streaming Email” teaches an audiovisual e-mail system as recited in claim 46 wherein “said audiovisual enhancement includes both audio and visual components” at page 309.

As per claim 48, “Streaming Email” teaches an audiovisual e-mail system as recited in claim 46 wherein “said audiovisual enhancement includes only an audio component” at page 309.

As per claim 49, "Streaming Email" teaches an audiovisual e-mail system as recited in claim 46 wherein "said audiovisual enhancement includes only a visual component" at page 309.

As per claim 50, "Streaming Email" teaches the audiovisual e-mail system as recited in claim 46 wherein "said audiovisual enhancement includes a streaming video displayed within a window of said recipient's machine" at page 313.

As per claim 51, "Streaming Email" teaches the audiovisual e-mail system as recited in claim 46 wherein "said audiovisual enhancement is developed on said sender's machine" at page 310.

As per claim 61, "Streaming Email" teaches a method for providing active e-mail comprising:

- "generating a sender email" at page 309;
- "including a code segment in said email to cause a self-executing, transient code segment to automatically download over a network and execute within a context of said email upon an opening of said email " at page 309;
- "sending said e-mail to a recipient" at page 309.

As per claim 62, "Streaming Email" teaches "an email server comprising a computer configured to receive e-mail text from a sender, to associate said e-mail text

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with a code segment and to send said code segment to a recipient in a body of an email" at page 309.

As per claim 63, "Streaming Email" teaches a computer program embodied on a computer readable media for providing active email comprising: "software segment receiving email text from a sender ; software segments associating said email text with a code segment; and software segments sending said code segment to a recipient in a body of an email" at page 309.

As per claim 64, "Streaming Email" teaches a method for providing e-mail comprising: "providing a link between an open email on a recipient computer and a stored audio and/or video file not on said recipient computer; and streaming said audio and/or video file to said recipient computer for display within said open email in such a manner that other content of said email which is intended to be viewed is not visually obscured" at pages 313-314.

As per claim 65, "Streaming Email" teaches a computer program embodied on computer readable media for providing email comprising: "software segments providing a link between an open email on a recipient computer and a stored audio and/or video file not on said recipient computer; and software segments streaming said audio and/or video file to said recipient computer for display within said open email in such a manner that other content of said email which is intended to be viewed is not visually obscured" at pages 313-314.

3. **Claims 84-86** are rejected under 35 U.S.C. 102(e) as being anticipated by Cleron et al. (US 6,223,213 B1), hereinafter "**Cleron**".

As per claim 84, Cleron teaches a method for enhancing an email comprising:
"enhancing an email with an HTML code segment; and reviewing the enhancement of said email by executing said HTML code segment prior to sending said email" at Col. 6 line 63 to Col. 7 line 55 .

As per claim 85, "Streaming Email" teaches an email server comprising a computer configured to enhance an email with an HTML code segment and to permit the review the enhancement of said email by executing said HTML code segment prior to sending said email" at Col. 6 line 63 to Col. 7 line 55.

As per claim 86, "Streaming Email" teaches a computer program for enhancing email comprising: "software segments for enhancing an email with an HTML code segment; and software segments for reviewing the enhancement of said email by executing said HTML code segment prior to sending said email" at Col. 6 line 63 to Col. 7 line 55.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1, 33-45** are rejected under 35 U.S.C. 103(a) as being unpatentable over XP-002150023 ("Streaming Email"), hereinafter "**Streaming Email**" and in view of Tolba et al. ("Pure Java-based Streaming MPEG Player"), hereinafter "Tolba".

As per claim 1, "Streaming Email" teaches a method for providing an audiovisual e-mail system (pages 308-315, Video Express Email) comprising:

- "providing a server connected to a network" at page 309;
("Streaming Email" teaches the ImageMind's Web Server connected to the Internet)
- "inputting a message and an audiovisual enhancement which is associated with said message from a sender into said server, said message to be sent as an e-mail to at least one recipient on said network" at page 309;

("Streaming Email" teaches the step of selecting video and audio data (i.e., "audiovisual enhancement") to a video e-mail message)

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- “associating said message with a self-executing, network downloadable programmable enhancement operative to automatically stream said audiovisual enhancement, at least in part, from said server over said network upon the opening of said email and to display said audiovisual enhancement within said email in conjunction with said message ” at pages 309, 313-314;

(“Streaming Email” teaches that video player can be attached to the e-mail message and is used to stream video file with the email)

- “and sending said e-mail over said network to said at least one recipient” at page 9.

The different between “Streaming email” and the invention of claim 1 is that “Streaming email” does not explicitly teach “display said audiovisual enhancement within said email in conjunction with said message **without the requirement of a previously installed viewer**”. However, Tolba teaches a Java-based streaming MPEG-1 video player in which “**the users will no longer need to pre-install any software plug-ins to display video**” (See Abstract, page 216). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the Java-base streaming video player as taught by Tolba with “Steaming email” as suggested by Tolba. Tolba discussed at page 216 four advantages of using a Java-based player including “program written entirely in Java run across platforms... without the need for native libraries. This allows greater use of MPEG video sequence because the users will no longer need to pre-install any software plug-in to display video”, “Java’s

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small footprint and availability”, “Java programs are compact”, “extensive networking capabilities are built into the language, making it easy to write programs that use the Internet communication”. All of these advantages will greatly improve “Streaming Email” system because it will reduce the time and resource to download and install the player and increase user's satisfaction with the system.

As per claim 33, “Streaming Email” and Tolba teach the method as recited in claim 1 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement includes both audio and visual components” at page 309.

As per claim 34, “Streaming Email” and Tolba teach the method as recited in claim 1 discussed above. “Streaming Email” also teach: wherein “said audiovisual enhancement includes only an audio component” at page 309.

As per claim 35, “Streaming Email” and Tolba teach the method as recited in claim 1 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement includes only a visual component” at page 309.

As per claim 36, “Streaming Email” and Tolba teach the method as recited in claim 1 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement includes a streaming video displayed within a window of a recipient's machine” at pages 312, 314.

As per claim 37, “Streaming Email” and Tolba teach the method as recited in claim 1 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement is developed on a sender's machine, and is transmitted to said server over said network” at page 310.

As per claim 38, “Streaming Email” and Tolba teach the method as recited in claim 37 discussed above. “Streaming Email” also teaches: wherein “said network includes a TCP/IP network” at page 311.

As per claim 39, “Streaming Email” and Tolba teach the method as recited in claim 38 discussed above. “Streaming Email” also teaches: wherein “said network includes the Internet” at page 308.

As per claim 40, “Streaming Email” teaches computer program segments embodied in computer readable media to provide an audiovisual e-mail system comprising:

- “a code segment transmitting over a network to a server an audiovisual enhancement which is associated with a message from a sender, said message to be sent as an e-mail to at least one recipient on said network” at page 309;
- “a code segment associating said message with a self-executing, network downloadable code segment operative to automatically stream said audiovisual

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enhancement, at least in part, from said server over said network and to display said audiovisual enhancement within said email in conjunction with said message upon the selection of said message by said at least one recipient” at pages 309-313.

The difference between “Streaming email” and the invention of claim 1 is that “Streaming email” does not explicitly teach “display said audiovisual enhancement within said email in conjunction with said message **without the requirement of a previously installed viewer**”. However, Tolba teaches a Java-based streaming MPEG-1 video player in which “**the users will no longer need to pre-install any software plug-ins to display video**” (See Abstract, page 216). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the Java-based streaming video player as taught by Tolba with “Streaming email” as suggested by Tolba. Tolba discussed at page 216 four advantages of using a Java-based player including “program written entirely in Java run across platforms... without the need for native libraries. This allows greater use of MPEG video sequence because the users will no longer need to pre-install any software plug-in to display video”, “Java’s small footprint and availability for small devices”, “Java programs are compact”, “extensive networking capabilities are built into the language, making it easy to write programs that use the Internet communication”. All of these advantages will greatly improve “Streaming Email” system because it will reduce the time and resource to download and install the player and increase user's satisfaction with the system.

As per claim 41, “Streaming Email” and Tolba teach the computer program segments embodied in computer readable media to provide an audiovisual e-mail system as recited in claim 40 discussed above “Streaming Email” also teaches: wherein “said audiovisual enhancement includes both audio and visual components” at page 309.

As per claim 42, “Streaming Email” and Tolba teach computer program segments embodied in computer readable media to provide an audiovisual e-mail system as recited in claim 40 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement includes only an audio component” at page 309.

As per claim 43, “Streaming Email” and Tolba teach computer program segments embodied in computer readable media to provide an audiovisual e-mail system as recited in claim 40 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement includes only a visual component” at page 309.

As per claim 44, “Streaming Email” and Tolba teach computer program segments embodied in computer readable media to provide an audiovisual e-mail system as recited in claim 40 discussed above. “Streaming Email” also teaches: wherein “said audiovisual enhancement includes a streaming video displayed within a window of said recipient's machine” at page 312.

As per claim 45, "Streaming Email" and Tolba teach computer program segments embodied in computer readable media to provide an audiovisual e-mail system as recited in claim 40 discussed above. "Streaming Email" also teaches: wherein "said audiovisual enhancement is developed on a sender's machine" at page 310.

(10) Response to Argument

A. The rejection under 35 U.S.C 102(b) of claims 46-51 and 61-65 as being anticipated by XP-002150023 ("Streaming Email").

1. Claim 46

Claim 46 is directed to a system for allowing a sender to attach a self-executing program (i.e. "a video player") to an e-mail message so that an audio visual enhancement (i.e. "a video file") can be streamed over a network and displayed at the recipient computer upon selection of said email.

The examiner agrees with Appellant's characterization of the Video Express Email product (described in "Streaming Email") , which attaches one ore more files to an email including a pointer file and an optional player file which starts the player file.

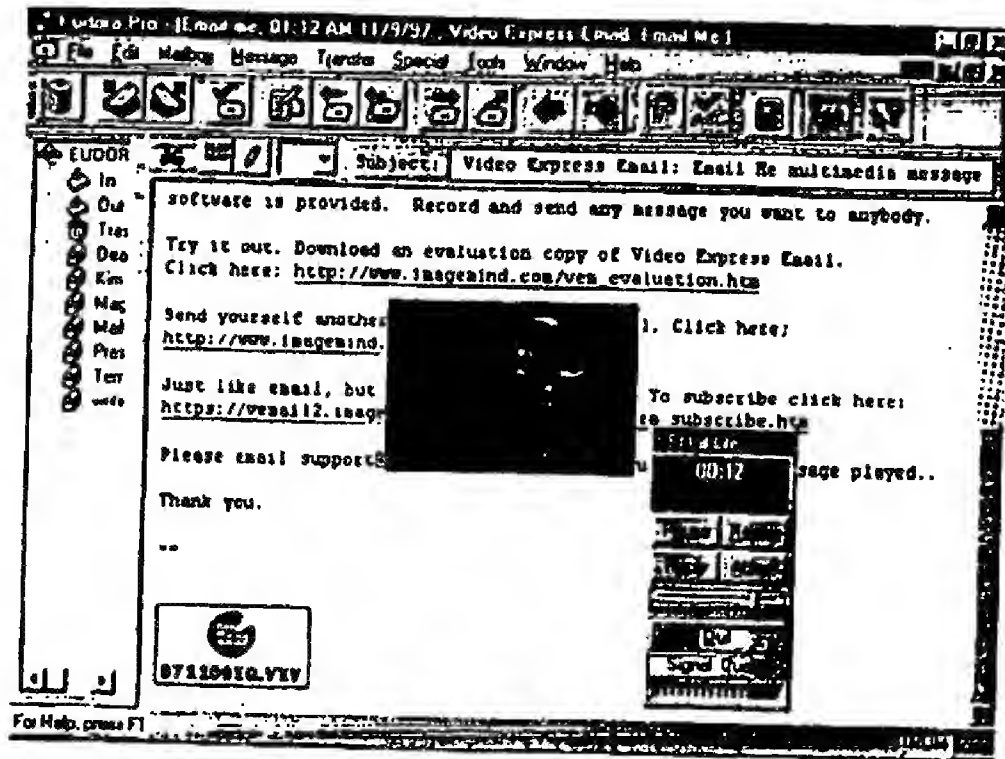
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The pointer file points to an audio/visual file which is streamed to the player (Appeal Brief , page 11.)

Appellant argued that “there is no disclosure in Streaming Email, pages 310-313, of “associating said message with a self-executing program operative to stream said audiovisual enhancement, at least in part , from said server over said network and to display said audiovisual enhancement in conjunction with said message on a recipient machine upon the selection of said message by said at least one recipient”. On the contrary, “Streaming Email” clearly teaches all limitation of claim 46 at pages 312-313, specifically, “Streaming Email” teaches :

- “When you receive Video Express Email, you get your message the same way as you receive your other emails”
- “Your email message may look something like Figure 18.5. It includes the Video Express Email Player that will allow you to view and stream the file”
- “Most email programs likes Netscape Mail and Eudora allow you to double- click on the message to launch it with its specified player. Double-click on it and the Video Express Email miniplayer should launch and play the message (See Figure 18.6).”

Figure 18.6 The miniplayer launches and plays the movie back for you. If you receive an audio image, you just see an animated speaker graphic.



Appellants further argued that "the structure associated with the embodiment of claim 46 is entirely different with the structure which implement the functionality of Video Express Mail", but does not provide any substantive analysis thereof. On the contrary, the examiner has made a Prima Facie Case of Equivalence by finding that a prior art element that

- (A) performs the function specified in the claim,
- (B) is not excluded by any explicit definition provided in the specification for an equivalent, and

(C) is an equivalent of the means- plus function limitation.

If the applicant disagrees with the inference of equivalence drawn from a prior art reference, the applicant may provide reasons why the applicant believes the prior art element should not be considered an equivalent to the specific structure, material or acts disclosed in the specification. Such reasons may include, but are not limited to:

- (A) Teachings in the specification that particular prior art is not equivalent;
- (B) Teachings in the prior art reference itself that may tend to show nonequivalence; or
- (C) 37 CFR 1.132 affidavit evidence of facts tending to show nonequivalence.

Appellant has not met the burden of proving nonequivalence, the rejection of claim 46 is therefore should be sustain, see MPEP at 2184[R-2]

2. Claim 61.

Regarding claim 61, Appellant argued that there is no disclosure in “Streaming Video” on page 309 of generating a sender email including a code segment in said email to cause a self-executing, transient code segment to automatically download over a network and execute within a context of said email upon an opening of said email” .

On the contrary, “Streaming Email” teaches at page 309 the step of generating an email including a player to automatically download and display audio/video file upon opening of the email. Appellants did not provide any reasoning for the distinction , nor

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any substantive analysis thereof. "Streaming Email" therefore anticipates the claimed limitations and the rejection of claim 61 should be sustained.

3. Claim 62.

Regarding claim 62, Appellant argued that "there is nothing in Streaming Email on page 309 which teaches an email server comprising a computer configured to receive email text from a sender, to associate said email text with a code segment and to send said code segment to a recipient in a body of an email".

On the contrary, "Streaming Email" teaches at page 309 the step of generating an email including a player to automatically download and display audio/video file upon opening of the email. Appellants did not provide any reasoning for the distinction, nor any substantive analysis thereof. "Streaming Email" therefore anticipates the claimed limitations and the rejection of claim 62 should be sustained.

4. Claim 63.

Regarding claim 63, Appellant argued that "there is nothing in Streaming Email which teaches software segments receiving email text from a sender, software segments associating said e-mail text with a code segment; and software segments sending said code segment to a recipient in a body of an email".

On the contrary, "Streaming Email" teaches at page 309 the step of generating an email including email text from a sender (See Fig. 18.3), and a player (i.e. "code segment") associated with said email text to be sent to a recipient. Appellants did not

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provide any reasoning for the distinction , nor any substantive analysis thereof.

“Streaming Email” therefore anticipates the claimed limitations and the rejection of claim 63 should be sustained.

5. Claim 64.

Regarding claim 64, Appellant argued that “there is nothing in Streaming Email on page 313 or 314 which teaches “providing a link between an open email on a recipient computer and a stored audio and/or video file not on said recipient computer; and streaming said audio and/or video file to said recipient computer for display within said open e-mail in such a manner that other content of said e-mail which is intended to be viewed is not visually obscured”.

On the contrary, “Streaming Email” teaches at pages 313 the step of creating a pointer to a video file (i.e. "link") and attach it to an email in order to stream the video file to the recipient. Appellants did not provide any reasoning for the distinction , nor any substantive analysis thereof. “Streaming Email” therefore anticipates the claimed limitation and the rejection of claim 64 should be sustained.

6. Claim 65.

Regarding claim 65, Appellant argued that “there is nothing in Streaming Email on pages 313 or 314 teaches providing a link between an open e-mail on a recipient

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computer and a stored audio and/or video file not on said recipient computer; and streaming said audio and/or video file to said recipient computer for display within said open e-mail in such a manner that other content of said e-mail which is intended to be viewed is not visually obscured”.

On the contrary, “Streaming Email” teaches at page 309 the step of generating an email including a player to automatically download and display audio/video file upon opening of the email. Appellants did not provide any reasoning for the distinction , nor any substantive analysis thereof. “Streaming Email” therefore anticipates the claimed limitation and the rejection of claim 61 should be sustained.

B. The rejections under 35 U.S.C 102(e) of claims 84-86 as being anticipated by U.S Patent No. 6,223,213 issued to Cleron et al.

1. Claim 84.

Regarding claim 84, Appellant argued that Cleron teaches “the sending of an audio/visual file as a MIME message. As is well known to those of skill in the art, a MIME message is attachment for e-mails, not an HTML code segment provided in the body of an e-mail”.

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On the contrary, Cleron teaches at Col. 6 line 63 to Col. 7 line 55 an "HTML email page" which anticipates the claimed "HTML code segment". Cleron also teaches the HTML email page are reloaded (i.e., executed) a few times before sending said email : "cause a browser to send a request for new HTML email page that show both the message and the attached clip" at Col. 7 lines 17-19 and "the browser then renders the HTML email page with the image or sound bite shown attached to the bottom" at Col. 7 lines 35-40, and "When the message is complete, the user clicks the "Send" links 126 in the email screen" at Col. 7 lines 47-48).

2. Claim 85.

Regarding claim 85, Appellant argued that "the sending of an audio/visual file as a MIME message. As is well known to those of skill in the art, a MIME message is attachment for e-mails, not an HTML code segment provided in the body of an e-mail". On the contrary, Cleron teaches at Col. 6 line 63 to Col. 7 line 55 an "HTML email page" which anticipates the claimed "HTML code segment". Cleron also teaches the HTML email page are reloaded (i.e., executed) a few times before sending said email : "cause a browser to send a request for new HTML email page that show both the message and the attached clip" at Col. 7 lines 17-19 and "the browser then renders the HTML email page with the image or sound bite shown attached to the bottom" at Col. 7 lines 35-40, and "When the message is complete, the user clicks the "Send" links 126 in the email screen" at Col. 7 lines 47-48).

3. Claim 86.

Regarding claim 86, Appellant argued that “the sending of an audio/visual file as a MIME message. As is well known to those of skill in the art, a MIME message is attachment for e-mails, not an HTML code segment provided in the body of an e-mail”. On the contrary, Cleron teaches at Col. 6 line 63 to Col. 7 line 55 an “HTML email page” which anticipates the claimed “HTML code segment”. Cleron also teaches the HTML email page are reloaded (i.e., executed) a few times before sending said email : “cause a browser to send a request for new HTML email page that show both the message and the attached clip” at Col. 7 lines 17-19 and “the browser then renders the HTML email page with the image or sound bite shown attached to the bottom” at Col. 7 lines 35-40, and “When the message is complete, the user clicks the “Send” links 126 in the email screen” at Col. 7 lines 47-48).

C. The rejection under 35 U.S.C 103(a) of claim 1 and 33-45 as being unpatentable over XP-002150023 ("Streaming Email") in view of Tolba et al. ("Pure Java-based Streaming MPEG Player")

1. Claim 1.

Regarding claim 1, Appellants argued that “it is not proper to combine Streaming Email with Tolba”, but did not provide any reasoning or substantive analysis thereof.

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On the other hand, as seen in the rejection of claim 1 above, the Examiner clearly explained the difference between "Streaming email" and the invention of claim 1 is that "Streaming email" does not explicitly teach "display said audiovisual enhancement within said email in conjunction with said message **without the requirement of a previously installed viewer**". However, Tolba teaches a Java-based streaming MPEG-1 video player in which **"the users will no longer need to pre-install any software plug-ins to display video"** (See Abstract, page 216). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the Java-based streaming video player as taught by Tolba with "Streaming email" as suggested by Tolba. Tolba discussed at page 216 four advantages of using a Java-based player including "program written entirely in Java run across platforms... without the need for native libraries. This allows greater use of MPEG video sequence because the users will no longer need to pre-install any software plug-in to display video", "Java's small footprint and availability", "Java programs are compact", "extensive networking capabilities are built into the language, making it easy to write programs that use the Internet communication". All of these advantages will greatly improve "Streaming Email" system because it will reduce the time and resource to download and install the player and increase user's satisfaction with the system.

Both "Streaming Email" and Tolba are in the same field of endeavor, relating to streaming video content over the Internet. The combination of "Streaming Email" and Tolba is therefore proper and the 103 rejection should be sustained.

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Appellants further argued that the combination of "Streaming Email" and Tolba "having a viewer written in Java provided as an attachment to an email" does not meet the "without the requirement of a previously installed viewer" limitation of claim 1", but did not explain why they are different. On the other hand, Tolba suggests the use of Java-based streaming video player so that "the user no longer need to pre-install any software plug-ins to display video", which clearly anticipates the claim limitation.

Appellants further argued that "Streaming Email" and Tolba, as combined, do not teach all limitations of claim 1. On the contrary, as seen in the rejection of claim 1, the examiner provided the detailed mapping of these claimed limitation to "Streaming Email", and Appellants have not expressed a line of reasoning for the distinctions, nor provide any substantive analysis thereof to show that the rejection is in error.

2. Claim 40.

Appellants repeated the same arguments as in claim 1. The examiner maintain the position that the combination of "Streaming Email" and Tolba are proper and teach all limitations of claim 40 as detailed in the rejection of claim 40.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Khanh B. Pham/

Primary Examiner

Art Unit 2166

Conferees:

/Hosain T Alam/

Supervisory Patent Examiner, Art Unit 2166

/Mohammad Ali/

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